

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:09CR65
)	
Plaintiff,)	
)	MEMORANDUM
vs.)	AND ORDER
)	
MARY RILEY,)	
)	
Defendant.)	

This matter is before the Court on a Report and Recommendation (Filing No. 75) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty. There are no objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

Throughout this case, the record reflects that the parties have assumed that the Defendant faces a maximum of 5 years supervised release. (Filing Nos. 3, 20, 79 at ¶ 13(a), 80, 97 at pp. 9, 14.) However, the statute indicates that the penalty includes "at least" 5 years supervised release. 21 U.S.C. § 841(b).

Because the Court is unable to conclude that the Defendant's plea was knowing, intelligent and voluntary, this matter will be overruled and remanded to the Magistrate Judge for further proceedings.

IT IS ORDERED:

1. The Report and Recommendation (Filing No. 75) is overruled;
2. The plea and the plea agreement are not accepted at this time;
3. The order on sentencing schedule (Filing No. 85) is vacated; and
4. This case is remanded to the Magistrate Judge for further proceedings.

DATED this 24th day of July, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge